

**OPT-IN AGREEMENT  
TO PARTICIPATE IN THE TOWN OF HEMPSTEAD, NEW YORK/BUSPATROL  
SCHOOL BUS STOP ARM ENFORCEMENT PROGRAM**

**Participating School District Name:** Malverne Union Free School District

**Total No. of School Buses:** ALL

**Agreed-Upon Installation Start Date:** June 15, 2022

**Participating School District Point of Contact:** Daniel Balzan

It is mutually agreed by and between the parties hereto as follows:

1. **Purpose.** This "Opt-In Agreement" constitutes a formal, binding agreement between the School District ("Participating School District" or "District"), the Town of Hempstead ("TOH") and BusPatrol America LLC ("BusPatrol") (collectively the "Parties"), for the installation, operation and maintenance of school bus photo violation monitoring systems on school buses owned or operated by the District in accordance with the Hempstead Town Code Chapter 186 (the "Local Law") and Section 1174-a of the New York State Vehicle and Traffic Law (the "Stop Arm Laws"), as well as the installation and operation of other optional internal student safety cameras if selected by the Participating School District (the "BusPatrol System").
2. **Authorization.** The Parties' execution of this Opt-In Agreement will serve as authorization for the TOH and its contractor, BusPatrol, to install and operate the particular BusPatrol System identified above on buses owned and operated by the District or privately owned and operated by Participating School District's transportation services vendor ("Bus Company") for compensation under contract with such District.
3. **Payment.** In accordance with the Stop Arm Laws and the Master Agreement between TOH and BusPatrol for the "SCHOOL BUS STOP ARM ENFORCEMENT PROGRAM" (the "Master Agreement"), the TOH will be solely responsible for paying BusPatrol for the installation, maintenance and use of the BusPatrol System on buses owned and operated by the Participating District or privately owned and operated by Bus Company for compensation under contract with such district, to be paid solely from the revenues from any fines generated by said school bus photo violation monitoring systems operated within the Participating School District. Participating School District will have no responsibility for payment of any amounts due to BusPatrol for the installation, operation or maintenance of the BusPatrol System, and the Participating School District shall have no right or entitlement to any portion of collected monies from the enforcement of the Stop Arm Laws under this agreement or the Master Agreement.
4. **Responsibilities of the Parties:**
  - a. **BusPatrol.** BusPatrol is responsible for providing all equipment and services necessary to install, operate and maintain the BusPatrol System as described in Exhibit A of the Master Agreement, a copy of which is attached as Attachment 1.

- b. TOH. TOH is responsible for administering and overseeing BusPatrol's performance of the Stop Arm Enforcement Program as set forth in the Master Agreement, including but not limited to:
- i. Arranging for TOH Enforcement Technician to review evidence packages and approve or disapprove potential notices of violation of the Stop Arm Laws;
  - ii. Installing signage provided by BusPatrol in conformance with standards established in the Manual of Uniform Traffic Control Devices; and
  - iii. Reviewing and approving BusPatrol invoices for payment, in accordance with the Master Agreement.
- c. Participating School District. Participating School District is responsible for:
- i. Providing BusPatrol or its agents with access to buses owned or operated by the District, beginning on the Installation Start Date specified above (to be mutually agreed upon by the District, the TOH and BusPatrol);
  - ii. Providing BusPatrol with ongoing access to any and all BusPatrol equipment installed on buses owned or operated by the District, as reasonably necessary for BusPatrol to operate and maintain the school bus violation monitoring system;
  - iii. Providing BusPatrol with electronic copies of school bus routing information, in Excel or CSV format if possible, for the purpose of identifying high risk routes and prioritizing an installation schedule;
  - iv. Using best efforts to maintain the routes identified in Subsection 4(c);
  - v. If the Participating School District does not own and operate the buses customarily used on the routes in its district, then the Participating School District shall enter into an agreement with the Bus Company, and said agreement shall require compliance with the applicable terms of this Opt-In Agreement. If the Participating School District does not enter into such agreement with the Bus Company, or if the Bus Company fails to comply with the applicable terms of the Master Agreement or this Opt-In Agreement, the TOH or BusPatrol, at its option, may terminate the Opt-In Agreement with the Participating School District;
  - vi. Advising the Bus Company, if any, of its contractual and statutory obligations to provide Contractor with access to the District Buses owned/and or operated by the Bus Company, beginning on the Installation Start Date specified above, and facilitate the Contractor's efforts to access same;
  - vii. Using best efforts to properly store, secure, maintain, and repair the school buses when not in use to reasonably safeguard the BusPatrol System;
  - viii. Appointing a designated point of contact, identified above, who shall be authorized to act on behalf of the Participating School District on all matters relating to this Opt-In Agreement and District's use of and participation in the school bus school bus photo violation monitoring systems; and

- ix. Implementing security measures to ensure that any photographs, microphotographs, videotapes, other recorded images and data from any non-enforcement cameras installed under this Agreement are only accessed by authorized personnel from the Participating School District.
- 5. License, Restricted Use. BusPatrol grants to the Participating School District a limited, non-exclusive license to use the BusPatrol System, including BusPatrol Equipment and BusPatrol Software and other BusPatrol Intellectual Property (collectively "BusPatrol Intellectual Property"), solely for purposes of carrying out this Opt-In Agreement. This license shall continue for so long as this Opt-In Agreement remains in effect, and shall expire immediately upon termination or expiration of this Agreement. Participating District shall immediately cease any and all use of the BusPatrol Intellectual Property upon termination or expiration of this Opt-In Agreement, unless specifically authorized by BusPatrol in a separate written license agreement.

The Participating District agrees that it will not use the BusPatrol Intellectual Property for any purpose other than BusPatrol's operation of the BusPatrol System during the term of this Agreement. Participating District will not disclose the BusPatrol Intellectual Property to any third parties without the prior express written permission of BusPatrol; will not make any modifications to the BusPatrol System; and will not attempt to disassemble, de-compile or otherwise perform any type of reverse engineering to the BusPatrol System, or cause any other person to do any of the foregoing.

- 6. Reporting. In accordance with the Local Law, the Participating School District, acting by and through the Superintendent of Schools of such District, or his or her designee shall provide any report required of the District, pursuant to Section 1174-a of the Vehicle Traffic law, to the State, TOH, any incorporated village that is within the Participating School District and enters into a participation agreement with TOH and BusPatrol, the Nassau County Traffic & Parking Violations Agency, or any official(s) thereof. BusPatrol and TOH agree to work with the Participating School District to provide any information or other reasonable assistance necessary for District to prepare and submit any required reports.
- 7. Restrictions on Access to Enforcement Data. In accordance with the N.Y. Vehicle & Traffic Law, the Local Law, and the Master Agreement, the parties agree that BusPatrol will implement controls and configure the BusPatrol system to safeguard enforcement data generated by the external cameras and other components of the BusPatrol Stop Arm Enforcement Solution as follows:
  - a. Pursuant to the Local Law and Section 1174-a (a)(3)(i) of the Vehicle and Traffic Law, BusPatrol will implement controls and configure the BusPatrol system to prevent Participating School District from accessing any photographs, microphotographs, videotapes, other recorded images and data from school bus photo violation monitoring systems but shall provide, pursuant to this agreement and as provided in the Local Law, for the proper handling and custody of such photographs, microphotographs, videotapes, other recorded images and data produced by such systems, and for the forwarding of such photographs, microphotographs, videotapes, other recorded images and data to the TOH for the purpose of determining whether a motor vehicle was operated in violation of subdivision (a) of Section 1174 of the New York Vehicle and Traffic Law and imposing monetary liability on the owner of such motor vehicle therefor.
  - b. In accordance with the Local Law, BusPatrol will implement controls and configure the BusPatrol system to ensure that all photographs,

microphotographs, videotapes, other recorded images and data produced by school bus photo violation monitoring systems shall be destroyed (i) ninety days after the date of the alleged imposition of liability if a notice of liability is not issued for such alleged imposition of liability pursuant to the Local Law or (ii) upon final disposition of a notice of liability issued pursuant to this Local Law.

8. Restrictions on Access to Non-Enforcement Camera Data. The parties agree that BusPatrol will implement controls and configure the BusPatrol system to ensure that any photographs, microphotographs, videotapes, other recorded images and data from the internal cameras (if any) installed pursuant under this Agreement shall be made available only to the Participating School District, and shall not be made available to the TOH or any third party except as explicitly authorized by the Participating School District. In accordance with the Master Agreement, BusPatrol will implement controls and configure the BusPatrol system to ensure that all video footage, recorded images and other information generated through such non-enforcement cameras shall be destroyed within 90 days unless a longer period is authorized by Participating School District or required by law.
9. Changes. Changes to this Opt-In Agreement may be made only by mutual written agreement of the parties.
10. Term, Termination.
  - a. This Agreement shall commence on the Agreed Upon Installation Start Date above and shall terminate on December 1, 2024, unless otherwise terminated as set forth herein (the "Initial Term"). Upon expiration of the Initial Term, this Agreement may be extended for additional periods of one year each, not exceeding in total five (5) years, upon such terms and conditions as may be agreed between the parties as long as New York State has extended or eliminated the provisions of the enabling legislation as contained in Section 1174-a of the Vehicle and Traffic Law.
  - b. This Opt-In Agreement will automatically terminate in the event the Master Agreement between BusPatrol and TOH is terminated in accordance with the terms of said Master Agreement.
  - c. This Opt-In Agreement may also be terminated by the Participating School District, the TOH or BusPatrol by providing 30 days prior written notice to the other parties.
  - d. In the event of a termination, Participating School District shall immediately cease use of the BusPatrol System, including any and all BusPatrol Equipment, BusPatrol Software or Intellectual Property, and allow BusPatrol reasonable access to buses owned and operated by the Participating School District or privately owned and operated for compensation under contract with such district to remove the BusPatrol Equipment in accordance with the wind down provisions of the Master Agreement.
  - e. Termination of this Opt-In Agreement will have no effect on the Master Contract, or on any Opt-In Agreement with any other Participating School District.

11. Defense and Indemnification.

**PROFESSIONAL SERVICES:** For all matters arising out of BusPatrol's professional services, BusPatrol agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the TOH, the Participating School District and its Board of Education, their officers, and employees against damages, liabilities and costs, including reasonable attorney's fees, to the extent caused by the negligent performance of BusPatrol, or third parties under the direction or control of BusPatrol in the performance of professional services under this Agreement.

**GENERAL LIABILITY:** For all matters other than those arising out of BusPatrol's professional services (such other matters commonly referred to as "General Liability Claims"), BusPatrol agrees to the fullest extent permitted by law to defend, indemnify and hold the TOH, the Participating School District and its Board of Education, and their officers and employees harmless from any and all such losses, claims, liens, demands and causes for action, including but not limited to, judgments, penalties, interest, court costs, and legal fees incurred by the TOH or the Participating School District on behalf of any party, in connection with or arising directly or indirectly from this Agreement. BusPatrol shall investigate, handle, respond to and defend any such claims, demands or suits at their sole expense, and shall bear all other related costs and expenses even if such claims, demands or suits are groundless, false or fraudulent. This indemnification section shall survive the expiration or termination of this Agreement.

In any matter in which indemnification hereunder for either professional or non-professional services would violate Section 5-322.1 of the New York General Obligations Law or any other applicable legal prohibition, the foregoing provisions shall not be construed to indemnify the TOH for damage arising out of bodily injury to persons or to property caused by or resulting from the sole negligence of TOH employees. The term "employee" shall include all officers, advisory board members and/or volunteers serving the TOH.

**Insurance Requirements.** At all times during the term of this Agreement, BusPatrol and its sub-contractors, if any, shall maintain at their own cost the following insurance and shall provide proof thereof to the TOH and the Participating School District, in the form of a Certificate of Insurance, prior to commencing work under this Agreement:

**Worker's Compensation Employer's Liability** (statutory limits). In compliance with the Workers' Compensation Law of the State of New York:

- a. certificate of insurance on an Acord form indicating proof of coverage for Worker's Compensation, Employer's Liability, **OR**
- b. New York State Workers Compensation Notice of Compliance (Form C-105, Form U-26.3, Form SI-12 or Form SI-105.2P).
- c. In the event that BusPatrol or the Participating School District is exempt from providing coverage, it must provide a properly executed copy of the Certificate of Attestation of Exemption from NYS Workers' Compensation Board, Form CE-200.

**Commercial General Liability** Insurance coverage including blanket contractual coverage for the operation of the program under this Agreement with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. This insurance shall be written on an occurrence coverage form and include bodily injury and property damage liability. The TOH and Participating School District must be listed as additional insureds. The additional insured endorsement for the Commercial General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. **Automobile Liability** Insurance coverage for all owned, scheduled, hired, and non-owned vehicles with a combined single limit of liability of not less than \$1,000,000. This insurance

shall include coverage for bodily injury and property damage. The TOH and Participating School District must be listed as additional insureds.

**Cyber/Network Security and Data Privacy Liability Insurance ("Cyber Policy")** of \$2,000,000 per claim and annual aggregate with a Retroactive Date as defined above that covers losses arising from actual or alleged acts, errors or omissions and intentional, fraudulent or criminal acts. Further, the policy will expressly provide, but not be limited to, coverage for losses arising from the following: (a) unauthorized use/access of computer systems (including mobile devices), servers, client's data or software; (b) defense of any regulatory action involving a breach of privacy; (c) failure to protect the confidential or proprietary information (personal and commercial information) and intellectual property from unauthorized disclosure or unauthorized access; (d) failure to adequately protect physical security of servers and systems including from cyber terrorism; (e) the costs for: notification, whether or not required by statute, credit file or identity monitoring, identity restoration, public relations or legal experts; (f) third party liability; (g) cyber extortion and cyber terrorism; and (h) no exclusion for actual or alleged breaches of professional services agreements associated with the above.

**Excess/Umbrella Liability**, if required, with limits not less than \$5,000,000 per occurrence with a \$5,000,000 aggregate. The TOH and Participating School District must be included as additional insureds.

All Acord form certificates of insurance must contain the following provisions:

- (A) The commercial general liability policy must include the additional insured endorsement forms cg 2037 July 2004 edition and the cg 2010 April 2013 edition or their equivalent.
- (B) All policies of insurance procured by BusPatrol as required under this Agreement shall list the TOH and Participating School District as certificate holders and name the TOH and Participating School District as an additional insureds on a primary and noncontributory basis. The commercial general and automobile policies are primary and noncontributory.
- (C) The commercial general liability, auto liability and workers compensation policies must contain a waiver of subrogation in favor of the TOH.
- (D) The umbrella/excess policy shall include follow form language over the underlying policies of insurance and must contain a waiver of subrogation in favor of the TOH. The umbrella/excess policy shall name TOH on a primary and noncontributory basis.
- (E) If the workers compensation Notice of Compliance is used instead of the Acord certificate of insurance, the Notice of Compliance must indicate that a waiver of subrogation in favor of the TOH is provided.

All policies of insurance referred to above shall be underwritten by companies authorized to do business in the State of New York with an A.M. Best financial strength rating of A- or better. In the alternative, the policies of insurance referred to above may be underwritten by Non-Admitted companies with an A.M. Best financial strength rating of A+ or higher. In addition, every policy required above shall be primary and noncontributory. Any insurance carried by the TOH, its officers, or its employees shall be excess and noncontributory insurance to that

provided by BusPatrol. BusPatrol and its sub-contractor(s), if any, shall be solely responsible for any deductible losses under each of the policies required above.

Payment(s) to BusPatrol may be suspended in the event BusPatrol and its sub-contractor(s), if any, fail to provide the required insurance documentation in a timely manner.

Prior to cancellation or material change in any policy, a thirty (30) day notice shall be given to the TOH Public Safety Commissioner at the address listed below:

Town of Hempstead  
Public Safety Department  
Attention: Commissioner  
200 N. Franklin Street  
Hempstead, NY 11550

On receipt of such notice, the TOH shall have the option to cancel this Agreement without further expense or liability to the TOH, or to require BusPatrol to replace the cancelled insurance policy, or rectify any material change in the policy, so that the insurance coverage required by this paragraph is maintained continuously throughout the term of this Agreement in form and substance acceptable to the TOH. Failure of BusPatrol to take out or to maintain, or the taking out or the maintenance of any required insurance, shall not relieve BusPatrol from any liability under this Agreement nor shall the insurance requirements be construed to conflict with or to limit the obligations of BusPatrol concerning indemnification.

All losses of TOH property shall be adjusted with and made payable directly to the TOH.

All Certificates of Insurance shall be approved by the TOH or designee prior to commencement of any work under this Agreement.

In the event that claims in excess of these amounts are filed in connection with this Agreement, the excess amount or any portion thereof may be withheld from payment due or to become due BusPatrol until BusPatrol furnishes such additional security as is determined necessary by the TOH.

14. Non-Assignment. This Agreement may not be assigned by the Participating School District without prior written consent of the TOH, and the TOH shall be relieved of all liability and obligations consistent with the New York State General Municipal Law Section 109 in the event of such unauthorized assignment.
15. Executory. All amounts to be paid to BusPatrol for the performance of the services called for in this Contract will be paid solely from the civil penalties collected from the operation of the BusPatrol System, as provided for by the Stop Arm Law. BusPatrol assumes the risk that program revenues will be sufficient to cover the Technology Fees, and therefore agrees that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of this Agreement in the event that gross revenues collected over the life of this Agreement (including any extensions thereof) are insufficient to cover any costs, expenses or fees associated with this Agreement owed to BusPatrol. BusPatrol will have no claim against the TOH or the Participating School District for the payment of any such unpaid costs, expenses or fees.

16. Notice. Except as otherwise provided in this Agreement, notice required to be given pursuant to this Agreement shall be made in writing and addressed to the following or such other person as the parties may designate:

Town of Hempstead  
Public Safety Department  
Attention: Commissioner  
200 N. Franklin Street  
Hempstead, NY 11550  
[JMartelli@tohmail.org](mailto:JMartelli@tohmail.org)

Malverne Union Free School District  
Daniel Balzan  
301 Wicks Lane  
Malverne, NY 11565  
[DBalzan@malverneschools.org](mailto:DBalzan@malverneschools.org)

BusPatrol America LLC  
Jean Souliere  
8540 Cinder Bed Road, Suite 400  
Lorton, Virginia 22079  
(703) 338-0208  
[jean@buspatrol.com](mailto:jean@buspatrol.com)

17. Non-Waiver. Failure of either party to exercise any rights under this Agreement for a breach thereof shall not be deemed a waiver thereof or a waiver of any subsequent breach.
18. Severability. If any provision of this Agreement shall be held unenforceable, the rest of the Agreement shall nevertheless remain in full force and effect.
19. Choice of Law, Venue. Any dispute arising directly or indirectly out of this Agreement shall be determined pursuant to the laws of the State of New York. The Parties hereby choose the New York State Supreme Court, Nassau County as the forum for any such dispute.
20. No Arbitration. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must instead be heard in accordance with the Paragraph above entitled "Choice of Law, Venue".
21. AUDIT. BusPatrol shall maintain an accounting system that enables the TOH to readily identify assets, liabilities, revenues, expenses and disposition of TOH funds directly related to the performance of this Contract. Records should include, but not be limited to, those kept by BusPatrol, its employees, agents, and assigns directly related to the performance of this Contract.

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which the vouchers or invoices are based are subject to review by the responsible department and audit by the TOH Comptroller. BusPatrol shall submit any and



all documentation and justification in support of expenditures or fees under this Agreement as may be required by the TOH.

The audits may include examination and review of the source and application of all funds from the TOH, state, or federal governments. BusPatrol shall not be entitled to any interim or final payment under this Agreement, **and any overpayment may be recouped**, if any audit requirements and/or requests have not been satisfactorily met **or if any expenditures or fees by BusPatrol are determined to be irregular by the auditor**. This paragraph shall survive the termination of the Agreement.

The Parties expressly agree that any access to relevant records shall be provided at a mutually agreed upon time and location, and will not disrupt the operation of Contractor's business. Notwithstanding the previous sentence, if the TOH becomes subject to a State or local audit, records shall be produced by BusPatrol upon the TOH's demand. In no event shall Contractor be obligated to maintain or provide access to records relating to the cost to develop, install, operate or maintain the BusPatrol System.

22. **SEVERANCE PAY.** The TOH Shall Not Be Charged for Severance Pay Incentives. The TOH is aware that from time-to-time contract agencies engage in programs such as early retirement plans which reward employees with a severance payment as an incentive toward voluntary resignation. The TOH is prohibited by the New York State Constitution from making a gift of public funds and such severance pay incentives amount to such a gift. Therefore, notice is hereby given that TOH funds shall not be used for the purpose of a severance pay or any such incentive. If an audit of payments made under this contract reveals that such payments have been made, BusPatrol and/or the Participating School District shall immediately reimburse the TOH for the full amount with interest upon receipt of a written demand from the TOH. In addition, the TOH may declare this agreement null and void.
23. **REQUIRED PROVISIONS OF LAW.** If any provision required by law is not inserted in this Agreement, through mistake or otherwise, then upon the application of either party, the Parties agree to work in good faith to amend this Agreement to make such required insertion.
24. **BINDING.** This Agreement shall be valid and binding once it has been approved by the TOH, executed by the TOH Public Safety Commissioner, and delivered to BusPatrol and the Participating School District at the addresses indicated in the introductory paragraph of this Agreement.
25. **RULES OF CONSTRUCTION.** This contract shall be deemed to have been mutually prepared by the parties hereto and shall not be construed against any of them solely by reason of authorship.
26. **COUNTERPARTS; SIGNATURES TRANSMITTED BY ELECTRONIC MEANS.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. A facsimile or signature transmitted by electronic means applied hereto or to any other document shall have the same force and effect as a manually signed original. This provision contemplates giving legal force and effect to copies of signatures. This provision does not contemplate the use of "electronic signatures" as regulated by New York State Technology Law Article 3, "Electronic Signatures and Records Act."

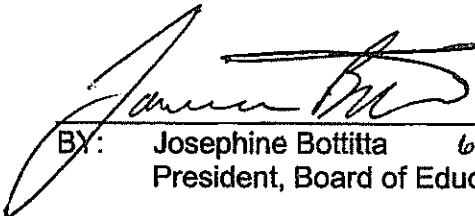
27. ENTIRE AGREEMENT. The terms of this Agreement, including its attachments and exhibits, represent the final intent of the Parties. Any modification, rescission or waiver of the terms of this Agreement must be in writing and executed and acknowledged by the Parties with the same formalities accorded this basic Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TOWN OF HEMPSTEAD

MALVERNE UNION FREE SCHOOL DISTRICT

\_\_\_\_\_  
BY: Joseph Martelli  
Commissioner, Public Safety Department

  
\_\_\_\_\_  
BY: Josephine Bottitta 6-14-2022  
President, Board of Education

BUSPATROL AMERICA, LLC

  
\_\_\_\_\_  
BY: Jean Souliere  
Chief Executive Office